

# Sumter City-County Board of Zoning Appeals

August 10, 2011

**BOA-11-15, 535 Brutsch Avenue (City)**

The applicant is appealing the Zoning Administrator's decision regarding Article 4, Section G, 4.g.2: Accessory Buildings



Appeals - Variance - Special Exception

# Sumter City-County Zoning Board of Appeals

August 10, 2011

**BOA-11-15, Scott A. Souza – 535 Brutsch Ave. (City)**

## I. THE REQUEST

<b>Applicant:</b>	Scott A. Souza
<b>Status of the Applicant:</b>	Property Owner.
<b>Request:</b>	An Appeal of an administrative decision by the Zoning Administrator regarding square footage calculation for Accessory Buildings per Article 4, Section G; 4.g.2
<b>Location:</b>	535 Brutsch Avenue
<b>Present Use/Zoning:</b>	Residence/PD
<b>Tax Map Reference:</b>	185-09-02-003
<b>Adjacent Property Land Use and Zoning:</b>	North – Res./PD South – Res./PD East – Res./PD West – Res./PD

## II. BACKGROUND

The Zoning Administrator finds that the Applicant has exceeded his allowable square footage for accessory uses on the subject property. The maximum cumulative size for accessory structures applicable to this lot size (.61 acre), according to Article 4.g.2.6 Exhibit 8A of the Zoning Ordinance, is 1,120 square feet. A legal, permitted accessory unit was constructed and completed on the property in 2010. It is 960 sq. ft.

The Applicant has now constructed a 768 sq. ft. accessory structure without a zoning or building permit. Thus, the allowable accessory square footage has been exceeded.

Recall the BZA history: The Applicant was issued a permit for a two car garage and above loft on October 27, 2008. He was required to appear before the Board of Appeals on October 14,

2009 for a variance in the size of the structure which exceeded the maximum square footage he was allowed by Ordinance.

This two-story storage building totaled 1,920 square feet.

The Sumter City-County Zoning Board of Appeals at its meeting on October 14, 2009, voted to deny BOA-09-14 for a variance of 800 additional sq. ft. from what was allowed by the Zoning Ordinance.

The Applicant, at that time, was required to convert the two story storage building into what he originally applied for which was a two car garage with an above loft. The advantage, by ordinance here is that for bone fide garages, only one story counts toward the calculation of size. This order has been followed resulting in the below permitted accessory structure, measures at 960 sq. ft. This leaves the Applicant with 160 sq. ft. of allowable accessory square footage.



*Two Car Garage and 2 Story Loft Completed*

The applicant applied for an additional permit on February 24, 2011 for a second accessory building in order to construct a shed totaling 192 sq. ft. The permit was not approved by the Zoning Administrator because it exceeded the 160 sq. ft. left over from the first building constructed. The Applicant was informed of two options: (1) reduce the proposed second accessory building to 160 sq. ft and obtain a building permit or (2) trim the building back to 120 sq. ft and a permit would not be required and the structure would not count toward his accessory buildings. Section 4.g.2.a(3) of the Zoning Ordinance provides for permitting exemptions on buildings under a certain size as follows:

***4.g.2. Residential Accessory Structures:*** *Residential accessory structures shall comply with the following conditions:*

***a. Conditions & Exceptions:***

*3. Any accessory building 120 sq. ft. in size or smaller (i.e. play houses, well pump houses, and other similar uses) will not be counted as accessory structures however they must comply with accessory structure 5 ft. minimum setbacks and shall be limited to two (2) per parcel.*

Additionally, under the 2006 International Building Code (IBC) Section 105.2, one-story detached accessory structures used as tool and storage sheds, playhouses and similar uses that do not exceed 120 sq. ft. in area are exempt from building permit requirements.

At that time, the Zoning Administrator understood that option two was acceptable to the Applicant and the Applicant would construct a 120 sq. ft building. A follow-up site visit discovered that the Applicant was building an open carport addition and covered porches to the front and rear of the building making it larger than 120 sq. ft. A stop work order was issued.

The new structure, shown below, measures 768 sq. ft. This exceeds the Applicant's allowable square footage by 608 sq. ft. per Section 4.g.2.a.3, referenced above. Applicant plans to construct a second open carport to the other side of this building the same size.



*Front porch Area & Back Porch Area*

## **APPEAL:**

The applicant and property owner, Scott Souza, is appealing the Zoning Administrator's decision concerning the square footage calculation for a new accessory building which he is constructing.

The applicant's position on how the maximum square footage of an accessory building is calculated is explained on the attachment with this report (**Exhibit 2**). He states in his remarks that he wishes to build the two attached open carports to park two (2) old cars for his sons to work on. Applicant believes that no open carports or overhangs should be included in square footage of an accessory building. He believes only the totally enclosed portion of this building should count toward his maximum allowed square footage.

### **Zoning Administrator Position**

The accessory structure constructed by the Applicant without a zoning or building permit and shown in the photographs on the previous page meets the definition of an accessory building as defined in Article 10, Section 10.b.1. of the Zoning & Development Standards Ordinance.

**Accessory Building:** *a building subordinate to the principal building on a lot used for the purposes customarily incidental to those of the main building.*

The Gross Floor Area (used interchangeably with "square footage") of an accessory use is determined by a measurement using the external limits of the faces of the structure. Gross Floor Area, as defined in Section 10.b.1 of the Ordinance states:

**Gross Floor Area (GFA):** *the sum of the floor area for each of the building's stories measured from the exterior limits of the faces of the structure, including basement floor area.*

Simply put, the measurement is taken around the perimeter of the structure in this case—a shed with an attached canopy/carport. In addition, guidance is taken from the 2006 International Building Code (IBC) when interpreting what qualifies as gross floor area.

#### ***2006 IBC, Section 502 Definitions***

**Area, Building:** *The area included within surrounding exterior walls (or exterior walls and sire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.*

The relevant sections of the Zoning Ordinance are as follows:

### **ARTICLE 4, SECTION G: ACCESSORY BUILDINGS AND USES**

**4.g.2. Residential Accessory Structures:** Residential accessory structures shall comply with the following conditions:



**b. Development Standards:**

6. **Maximum Size** – the maximum size of residential accessory structures shall be governed by Exhibit 8A, and shall be based on the gross acreage of the parcel of land on which it is located.

**EXHIBIT 8A**

Maximum square footage of residential accessory structures based on gross acreage

Acreage	0	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9
**<0.5	See note 1									
0.5	1100	1120	1140	1160	1180	-	-	-	-	-
1.0	1200	1225	1250	1275	1300	1325	1350	1375	1400	1425
2.0	1450	1475	1500	1525	1550	1575	1600	1625	1650	1675
3.0	1700	1725	1750	1775	1800	1825	1850	1875	1900	1925
4.0	1950	1975	2000	2025	2050	2075	2100	2125	2150	2175
5.0	2200	2225	2250	2275	2300	2325	2350	2375	2400	2425
6.0	2450	2475	2500	2525	2550	2575	2600	2625	2650	2675
7.0	2700	2725	2750	2775	2800	2825	2850	2875	2900	2925
8.0	2950	2975	3000	3025	3050	3075	3100	3125	3150	3175
9.0	3200	3225	3250	3275	3300	3325	3350	3375	3400	3425
>= 10.0	Exempt, see note 2									

**The highlighted area on the table notes the maximum square footage for Mr. Souza's lot size.**

ACCESSORY USE

Accessory buildings, **including** Garages, **carports**, animal shelters, Storage sheds, etc.

CONDITIONS

See Section 4.g.2. Where the accessory use is a combined garage and living space (or office use), the second story of the accessory use, when used as a living space or office use, shall not count against the square gross floor area limit as established in Exhibit 8A. The number of accessory structures shall not exceed two in any zoning district. **The maximum floor area established in Exhibit 8A is the total floor area of all accessory structures; this means that each residential parcel is entitled to a total of two (2) non-exempt accessory structures with a combined total floor area not to exceed the square footage limitations established in Exhibit 8A.** No accessory use shall be located in any required bufferyard.

As shown above, the Ordinance list carports as an accessory structure. A carport, as defined by Merriam-Webster Dictionary, is an open-sided automobile shelter by the side of a building. By the inclusion of carports in the list of accessory structures as well as the definitions of area and gross

floor area in both the Sumter City – Zoning & Development Standards Ordinance and the 2006 IBC, the area under the carport structures must be included in the area calculation.

The only overhangs that are not counted as total square footage are minor architectural projections such as eaves which cannot extend more than 24 inches from the building wall and they can also project into the required setbacks. This is reference in Section 4.f.7.b as stated below:

***4.f.7. Structures Projecting into Required Yards:*** *The following structures within the limits set forth may project into the required yards:*

*b. Eaves, cornices, gutters, fireplaces, and other minor architectural features projecting no more than **twenty-four (24) inches** from the main portion of a building shall be allowed to project into any yard;*

As outlined and referenced above, both the Zoning Ordinance and locally adopted building codes calculate building square footage in the same manner. The total square footage includes both the enclosed area as well as the open carports. This building as it sits today would not be exempt from building permitting and inspection requirements as it exceeds 120 sq. ft. in gross floor area.

As staff continued researching this matter for this appeal, we found a copy of the restrictive covenants pertaining to this subdivision. Included with this report is a copy of the Restrictive Covenants -- No. 1 of these covenants states that this lot can only have one single family dwelling and one attached or detached garage. Therefore, the covenants conflict with the proposed structure, in violation of Section 6-29-1145 of South Carolina State Law (**Exhibit 4**).

Section 6-29-1145 states in relevant part:

*If a Planning agency has notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity... the local planning agency must not issue the permit...*

The Zoning Administrator has notice now and therefore cannot issue a zoning approval.

### **III. ADMINISTRATION**

The Board of Zoning Appeals shall have the following powers and duties:

- a. **Appeals from administrative interpretation:** To hear and decide appeals where it is alleged there is an error in an order, requirement, decision, or determination made by an administrative official of the Sumter City-County Planning Commission in the enforcement of the Zoning Ordinance.
  1. An appeal shall be taken within thirty (30) days from the date of the decision rendered by the Zoning Administrator by filing with his or her office a written notice of appeal specifying the grounds thereof.

2. Appeals shall be submitted on application forms obtained from the Zoning Administrator.
3. All papers constituting the record upon which the appeal action was taken shall forthwith be transmitted to the Board of Zoning Appeals.
4. An application fee to be utilized for the incidental costs of administration and advertisement shall accompany appeal applications.
5. Any communication purporting to be an application for an appeal shall be regarded as mere notice to seek relief until it is made in the form required.

## **ROLE OF THE BOARD OF APPEALS**

The Board has the exclusive power to hear and decide appeals where it is alleged the Zoning Administrator, in enforcement of the Zoning Ordinance, erred in an order, requirement, decision or determination. In such cases, the board may reverse or affirm, wholly or in part, or may modify the order, requirements, decision or determination of the Zoning Administrator. The Board has all the powers of the Zoning Administrator in such cases and may issue or direct the issuance of a permit. *S. C. Code 6-29-800 (A)(1) and (E).*

In its decision on an administrative appeal from a decision of the Zoning Administrator, the Board is not bound by the conclusion or reasoning of the Zoning Administrator and may consider and apply the appropriate provisions of the Zoning Ordinance as dictated by the facts before it.

### **IV. DRAFT MOTIONS for BOA-10-30**

- A. I move that the Zoning Board of Appeals deny BOA-11-15, subject to the findings of fact and conclusions: (Note: A vote to deny **UPHOLDS** the Zoning Administrator decision).
- B. I move that the Zoning Board of Appeals approve BOA-11-15 on the following findings of fact and conclusions: (Note: A vote to approve **OVERTURNS** the Zoning Administrator decision).
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-11-15.

### **IV. ZONING BOARD OF APPEALS – AUGUST 10, 2011**

The Sumter City-County Board of Appeals at its meeting on Wednesday, August 10, 2011, voted to accept staff recommendation and deny this request subject to the findings of facts and conclusions listed on exhibit 1.

## **ATTACHMENTS**

Exhibit 1 - Draft Order

Exhibit 2 - BOA Application

Exhibit 3 - Applicant Memo to the Board plus 4 pages to include 2 subdivision layouts, site plan & overhang calculations.

Exhibit 4 - Restrictive Covenants



**Exhibit 1**  
**Order on Appeal**  
**Sumter Board of Appeals**

**BOA-11-15, 535 Brutsch Ave.**  
**Appeal from the Interpretation of the Zoning Administrator**  
**August 10, 2011**

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Date Filed: August 10, 2011

Permit Case No. BOA-11-15

The Sumter Board of Appeals held a public hearing on Wednesday, August 10, 2011 to consider the appeal of Scott A. Souza, 535 Brutsch Ave. Sumter, SC 29154 for an appeal from the Interpretation of the Zoning Administrator as set forth on the Form 2. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions:

- The shed building with carport, constructed by the applicant on the subject property, meets the definition of an “accessory” use according to the *City of Sumter Zoning and Development Standards Ordinance*.
- Based upon the Zoning Ordinance and the International Building Code guidance for determining the size of the structure, the size of the accessory structure is 768 sq. ft.
- Exhibit Table 8A clearly states the allowable square footage for a 0.61 acre lot is 1120 sq. ft. and that the area under open carports, as listed under accessory buildings, are to be included in the calculation of total square footage allowed by this table. With a previously permitted accessory structure on site measuring 960 sq. ft., the total sq. ft. proposed by the applicant for the two accessory structures is 1,728. This exceeds the allowable amount by 608 sq.ft.
- Zoning Administrator is correct in the interpretation of the City of Sumter Zoning Ordinance, Section G; 4.g.2 Accessory Buildings concerning the calculation of maximum allowed square footage for this property.

THE BOARD, THEREFORE, ORDERS that the appeal is ☒ **DENIED** – ☐ **GRANTED**, subject to the following conditions: None.

Date issued: \_\_\_\_\_

\_\_\_\_\_  
Chairman

Date mailed to parties in interest: \_\_\_\_\_

\_\_\_\_\_  
Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.**